

AUTHENTICATED

Contract No. 01PB-10854

FINANCIAL SETTLEMENT AGREEMENT
executed by the
BONNEVILLE POWER ADMINISTRATION
and
PACIFICORP

Table of Contents

Section		Page
1.	Term	2
2.	Definitions	2
3.	Satisfaction of Section 5(c) Obligations	3
4.	Cash Payments	5
5.	Passthrough of Benefits	9
6.	Audit Rights	10
7.	Assignment	10
8.	Conservation and Renewable Discount	12
9.	Governing Law and Dispute Resolution	12
10.	Notice Provided to Residential and Small Farm Customers	13
11.	Standard Provisions	14
12.	Termination of Agreement	15
13.	Signatures	15

Exhibit A Residential Load Definition

This FINANCIAL SETTLEMENT AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and PACIFICORP (PacifiCorp). PacifiCorp is a corporation organized under the laws of the State of Oregon. BPA and PacifiCorp are sometimes referred to in the singular as "Party" or in the plural as "Parties."

RECITALS

The Northwest Power Act establishes a Residential Exchange Program to provide benefits to residential and small farm consumers of Pacific Northwest utilities.

BPA implements the Residential Exchange Program through the offer, when requested, of a Residential Purchase and Sale Agreement.

On October 31, 2000, BPA and PacifiCorp entered into Contract No. 01PB-12229 (the "Settlement Agreement"), which provides, among other things, for BPA to provide PacifiCorp with Firm Power and Monetary Benefits to settle the Residential Exchange Program.

The term of the Settlement Agreement continues through September 30, 2011.

Since the execution of the Settlement Agreement, BPA and PacifiCorp have agreed that BPA will, rather than deliver Firm Power to PacifiCorp for the first 5 years of the Settlement Agreement, make cash payments to PacifiCorp during the period that begins October 1, 2001, and ends on September 30, 2006. BPA plans to use the Firm Power not sold to PacifiCorp to meet deficits in resources necessary to meet loads of publicly owned and cooperative customers in its firm load obligations in the Pacific Northwest.

The cash payments in lieu of Firm Power deliveries under the Settlement Agreement will be as provided for under this Agreement.

The Parties will also simultaneously execute an amendment to the Settlement Agreement that removes BPA's obligation to deliver Firm Power during the first 5 years of the Settlement Agreement.

The Parties agree:

1. TERM

This Agreement takes effect on the date signed by the Parties. Performance of this Agreement by the Parties shall begin on July 1, 2001, and shall continue through September 30, 2006 (Expiration Date), unless terminated earlier pursuant to section 12 below.

2. DEFINITIONS

Capitalized terms not defined below shall be as defined in the Settlement Agreement or the WP-02 General Rate Schedule Provisions.

- (a) "Contract Year" means each period during the term of this Agreement that begins each October 1 and which ends the following September 30. For instance, Contract Year 2002 begins October 1, 2001, and continues through September 30, 2002.

- (b) "Lowest PF Rate" means the lowest applicable cost-based power rate provided under the applicable PF rate schedule as applied to purchases of Firm Power at 100 percent annual load factor by BPA's preference customers. The applicable power rate shall be the PF rate for the same period as the adjustment to monthly cash payments or credit to balancing accounts under this Agreement.
- (c) "Northwest Power Act" means the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501.
- (d) "Qualified Entity" means an entity authorized under state law or by order of the applicable state regulatory authority to serve all or a portion of PacifiCorp's Residential Load.
- (e) "Residential Exchange Program" means the program established under section 5(c) of the Northwest Power Act.
- (f) "Residential Load" means the load eligible to receive benefits under this Agreement, as such load is defined in Exhibit A.
- (g) "Residential Purchase and Sale Agreement," or "RPSA," means an agreement between BPA and a Pacific Northwest utility that implements the Residential Exchange Program.

3. SATISFACTION OF SECTION 5(c) OBLIGATIONS

- (a) **Satisfaction of Section 5(c) Obligations**
BPA shall, in full and complete satisfaction of all of its obligations during the period from October 1, 2001, through September 30, 2006, under or arising out of section 5(c) of the Northwest Power Act, provide to PacifiCorp: (1) cash payments for the period that begins October 1, 2001, and ends on September 30, 2006, pursuant to section 4 of this Agreement; and (2) Monetary Benefit payments during such period under the Settlement Agreement, as amended. PacifiCorp agrees that the cash payments provided under this Agreement and the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations during the period from October 1, 2001, through September 30, 2006, under or arising out of section 5(c) of the Northwest Power Act.
- (b) **Invalidity**
 - (1) **Invalidity of this Agreement**
In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that this Agreement (or payments under section 4 of this Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar

days that the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 4 and the Monetary Benefits provided prior to such final determination shall be retained by PacifiCorp; and (2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law. This section 3(b)(1) shall survive notwithstanding any determination that any other provision of this Agreement is unlawful, void, or unenforceable.

(2) **Invalidity of the Settlement Agreement**

In the event the United States Court of Appeals for the Ninth Circuit finally determines, after all appeals or requests for reconsideration, that the Settlement Agreement (or payment of Monetary Benefits under the Settlement Agreement) is unlawful, void, or unenforceable, then: (A) PacifiCorp may provide written notice to BPA within 30 calendar days that the cash payments provided under section 4 of this Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act during the period following such final determination through September 30, 2006; or if no such notice is provided, (B) the Parties hereby agree that the provisions of section 3(a) above shall be of no further force or effect. In the event of the court's final determination, the Parties intend and agree that: (1) the cash payments pursuant to section 4 of this Agreement and the Monetary Benefits provided under the Settlement Agreement provided prior to such final determination shall be retained by PacifiCorp; and (2) the satisfaction of BPA's obligations to PacifiCorp under section 5(c) of the Northwest Power Act prior to such final determination shall be preserved, to the maximum extent permitted by law.

(c) **Negotiation of New Agreement if this Agreement Held Invalid**

If this Agreement (or payment under section 4 of this Agreement) is finally determined to be unlawful, void, or unenforceable and PacifiCorp does not notify BPA that the Monetary Benefits provided under the Settlement Agreement satisfy all of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act as described in section 3(b)(1) above, then both Parties agree to negotiate in good faith a new, mutually acceptable agreement that would, until the end of its term, be in satisfaction of BPA's obligations under or arising out of section 5(c) of the Northwest Power Act.

The term of such new agreement would continue for the remaining term of this Agreement.

4. CASH PAYMENTS

BPA shall make monthly cash payments to PacifiCorp as follows:

(a) **October 1, 2001, through September 30, 2002**

During the period that begins October 1, 2001, and continues through September 30, 2002, BPA shall pay PacifiCorp monthly amounts equal to:

Payment Type	Monthly Amount (\$)
Total Payment	\$6,634,240 [⌞]

[⌞]If it is determined that one or more load reduction contingency provisions under sections 4(e)(1), 4(e)(2), 4(e)(3), 4(e)(4), and 4(e)(5) have occurred, then this total monthly payment shall be increased to \$6,962,740 on the earliest date specified in an applicable section.

(b) **October 1, 2002, through September 30, 2006**

During the period that begins October 1, 2002, and continues through September 30, 2006, BPA shall pay PacifiCorp monthly amounts equal to:

Payment Type	Monthly Amount (\$)
Base Payment	\$8,644,058 [⌞]
Reduction of Risk Discount	<u>\$1,681,318</u>
Net Payment:	\$6,962,740 [⌞]

[⌞]This amount shall be equal to \$8,667,740 during a leap year.

[⌞]If, by December 1, 2001, PacifiCorp has entered into a settlement agreement with any of BPA's publicly-owned utility and cooperative customers that waives and dismisses legal challenges to any of the following: (1) the Settlement Agreement; (2) this Agreement; (3) the Residential Purchase and Sale Agreement Record of Decision (ROD); (4) the Power Subscription Strategy RODs, including the Residential Exchange Program Settlement ROD; and (5) the application of the 7(b)(2) surcharge to BPA's WP-02 rates, then this payment shall be reduced to \$6,962,740 (\$6,981,876 during a leap year).

(c) **Cash Payment Adjustments Due to Application of Safety-Net Cost Recovery Adjustment Clause (SN CRAC) and Dividend Distribution Clause (DDC) to BPA Firm Power Sales**

(1) **Adjustment to Cash Payments Resulting from SN CRAC and SN CRAC Balancing Account**

In the event of imposition of the SN CRAC to BPA's firm power sales, BPA shall reduce the monthly payment to PacifiCorp in section 4(a) or section 4(b) above by an amount equal to the hours in the month times the mills/kilowatthour (kWh) increase in the Lowest PF Rate at 100 percent load factor above the maximum millage amount allowed for the Lowest PF Rate for such month

under the Financial-Based CRAC, times 226 average megawatts (aMW) in Contract Year 2002 and 251 aMW in each year of Contract Years 2003-2006. BPA shall record the amounts of reduction in such monthly payments in a SN CRAC balancing account (the "SN CRAC Account").

(2) **DDC Balancing Account**

If BPA makes a monthly DDC payment as established in the WP-02 rate case, BPA shall calculate the amount BPA would have paid to a purchaser of 226 aMW of power in Contract Year 2002 and 251 aMW in each year of Contract Years 2003-2006 at the Lowest PF Rate at 100 percent load factor. BPA shall record each such monthly amount in a DDC balancing account (the "DDC Account").

(3) **Adjustment to Cash Payments Resulting from Amounts in SN CRAC Account and DDC Account**

(A) If there is an existing balance in the SN CRAC Account at the time BPA makes an addition to the DDC Account, BPA shall, within 9 months of the initial addition to the DDC Account, increase the monthly payment to PacifiCorp in section 4(b) above for a period of six months in an amount equal to one-sixth of the lesser of the balance in the SN CRAC Account or the projected balance of the DDC Account at the end of the six-month period, assuming no payments under this section are considered when calculating the projected balance. BPA shall record the amounts of such increases in monthly payments as reductions to the balances of the SN CRAC Account and the DDC Account.

(B) If there is no balance in the SN CRAC Account at the time BPA makes an addition to the DDC Account, BPA shall, within 9 months of an initial addition to the SN CRAC Account, increase the monthly payment to PacifiCorp in section 4(b) above for a period of six months in an amount equal to one sixth of the lesser of the projected balance in the SN CRAC Account at the end of the six-month period or the projected balance of the DDC Account at the end of the six-month period, assuming no payments under this section are considered when calculating the projected balance. BPA shall record the amounts of such increases in monthly payments as reductions to the balances of the SN CRAC Account and the DDC Account.

(C) Following any six-month period where BPA adjusts the monthly payment to PacifiCorp under section 4(c)(3)(A), 4(c)(3)(B), or this section 4(c)(3)(C), BPA shall increase the monthly payment to PacifiCorp for the next six months in an

amount equal to one-sixth of the lesser of the projected balance in the SN CRAC Account, if any, at the end of such six-month period, or the projected balance of the DDC Account, if any, at the end of such six-month period, assuming no payments under this section are considered when calculating the projected balance. BPA shall record the amounts of such increases in monthly payments as reductions to the balances of the SN CRAC Account and the DDC Account.

- (D) If there are fewer than six months remaining in the rate period from a date on which BPA increases monthly payments to PacifiCorp as a result of an addition to the DDC Account, then the amount of such monthly increase shall continue to be paid in monthly installments after September 30, 2006, until the six monthly payments are completed and the balance in either the DDC Account or SN CRAC Account is zero.

(d) **Payment Provisions**

BPA shall pay "PacifiCorp" the monthly cash payments as determined in sections 4(a), 4(b) and 4(c). BPA shall pay PacifiCorp within 30 days of the end of the calendar month for which cash payments are due (Due Date). After the Due Date, a late payment charge is calculated at a daily, simple interest rate determined by dividing the Prime Rate for Large Banks, as reported in the Wall Street Journal, plus 4 percent, by 365. The applicable Prime Rate for Large Banks shall be the rate reported on the first day of the month in which payment was received. BPA shall pay by electronic funds transfer using PacifiCorp's established procedures.

(e) **Load Reduction Contingency**

- (1) As of the execution date of this Agreement, the BPA Administrator has not issued any final rate decisions in Docket No. WP-02. In the event that the Load-Based Cost Recovery Clause (LB CRAC), materially consistent with the Joint Customer Group and BPA staff proposal is not adopted in the Administrator's Final Supplemental Record of Decision, the load reduction contingency in this section 4(e)(1) has occurred and the payments under section 4(a) of this Agreement will increase effective October 1, 2001.
- (2) If, in calculating the LB CRAC (excluding true-ups) applicable for the period October 1, 2001, through March 31, 2002, pursuant to section F(1) of the General Rate Schedule Provisions (GRSPs), BPA is able to meet either: criterion (A) below (through contracts executed no later than 7 calendar days prior to the final workshop explaining the calculation of the LB CRAC for the period from

October 1, 2001, through March 31, 2002), or criterion (B) below, then the load reduction contingency has not occurred and the payments under section 4(a) of this Agreement will not increase. If BPA is unable to meet both criterion (A) and criterion (B) below, then the load reduction contingency has occurred and the payments under section 4(a) of this Agreement will increase October 1, 2001.

- (A) BPA includes in the calculation of the LB CRAC (excluding true-ups) no more than 2,200 aMW (including all purchases made by BPA prior to April 10, 2001), per month of market power purchases for meeting LB CRAC augmentation on average for the period October 1, 2001, to March 31, 2002, where market power purchases for purposes of calculating the application of this contingency clause do not include (i) power buy-backs of public agency and cooperative customers, investor-owned utilities (IOUs), or direct service industrial customers (DSIs); or, (ii) power purchases from public agency and cooperative customers, IOUs, or DSIs to the extent such buy-backs and purchases were executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002.
- (B) The rate after application of the LB CRAC (excluding all true-ups) is no more than 1.87 times the PF, RL, and IP-TAC rates.

In the event that contracts executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC (excluding true-ups) for the period from October 1, 2001, through March 31, 2002, exceed the amount necessary to reduce market power purchases below 2,200 aMW per month in criterion 1, such additional load reductions shall be used to reduce the level of the LB CRAC.

- (3) If, in calculating the LB CRAC (excluding true-ups) applicable for the period April 1, 2002, through September 30, 2002, pursuant to section F(1) of the General Rate Schedule Provisions (GRSPs), BPA is able to meet either: criterion (A) below (through contracts executed no later than 7 calendar days prior to the final workshop explaining the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002), or criterion (B) below, then the load reduction contingency has not occurred and the payments under section 4(a) of this Agreement will not increase. If BPA is unable to meet both criterion (A) and criterion (B) below, then the load reduction contingency has occurred and the payments under section 4(a) of this Agreement will increase effective April 1, 2002.

- (A) BPA includes in the calculation of the LB CRAC (excluding true-ups) no more than 2,200 aMW (including all purchases made by BPA prior to April 10, 2001), per month of market power purchases for meeting LB CRAC augmentation on average for the period April 1, 2002, to September 30, 2002, where market power purchases for purposes of calculating the application of this contingency clause do not include (i) power buy-backs of public agency and cooperative customers, IOUs, or DSIs; or, (ii) power purchases from public agency and cooperative customers, IOUs, or DSIs to the extent such buy-backs and purchases were executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC for the period from October 1, 2001, through March 31, 2002, or are extensions of such buy-backs or purchases that were executed prior to April 10, 2001, and are extended prior to calculation of the LB CRAC for the period from April 1, 2002, through September 30, 2002.
- (B) The rate after application of the LB CRAC (excluding all true-ups) is no more than 1.87 times the PF, RL, and IP-TAC rates.

In the event that contracts executed between April 10, 2001, and the final date for execution of contracts used in the calculation of the LB CRAC (excluding true-ups) for the period from October 1, 2001, through March 31, 2002, or extensions of buy-backs or purchases that were executed prior to April 10, 2001, and are extended prior to calculation of the LB CRAC for the period from April 1, 2002, through September 30, 2002, exceed the amount necessary to reduce market power purchases below 2,200 aMW per month in criterion 1, such additional load reductions shall be used to reduce the level of the LB CRAC.

- (4) If, during the period October 1, 2001, through September 30, 2002, the amount of power forecast to be delivered by BPA to the DSIs in the calculation of the LB CRAC (excluding true-ups) exceeds 400 aMW per month on average for any six month period used in calculating the LB CRAC, then the load reduction contingency has occurred and the payments under section 4(a) of this Agreement will increase effective on the first day of such six month period used in the calculation of the LB CRAC.
- (5) If the amount of power actually delivered to the DSIs exceeds 400 aMW per month on average for any six month period as determined by BPA through written notice to its customers or during the true-up of the LB CRAC, then the payments under section 4(a) of this Agreement will increase effective on the first day of the month following such determination.

(f) **No Other Adjustments to Cash Payments**

Except as provided for in sections 4(a), 4(b), 4(c), and 4(e) above, there shall be no other adjustments to the cash payment amounts under this Agreement.

5. PASSTHROUGH OF BENEFITS

- (a) Except as otherwise provided in this Agreement, cash payment amounts received by PacifiCorp from BPA under this Agreement shall be passed through, in full, to each residential and small farm consumer, as either: (1) cash payments; or (2) as otherwise directed by the applicable State regulatory authority.
- (b) Cash payments shall be distributed to the Residential Load in a timely manner, as set forth in this section 5(b). The amount of benefits held in the account described in section 5(c) below at any time shall not exceed the expected receipt of cash payments from BPA under this Agreement over the next 180 days. If the annual monetary payment is less than \$600,000, then PacifiCorp may distribute benefits on a less frequent basis provided that distributions are made at least once each Contract Year.
- (c) Benefits shall be passed through consistent with procedures developed by PacifiCorp's State regulatory authority(s). Cash payments under this Agreement shall be identified on PacifiCorp's books of account. Funds shall be held in an interest bearing account, and shall be maintained as restricted funds, unavailable for the operating or working capital needs of PacifiCorp. Benefits shall not be pooled with other monies of PacifiCorp for short-term investment purposes.
- (d) Cash payments may be passed through to residential and small consumers that curtail Residential Load but would otherwise operate pursuant to a program approved by an applicable State regulatory authority.

6. AUDIT RIGHTS

BPA retains the right to audit PacifiCorp at BPA's expense to determine whether the benefits provided to PacifiCorp under this Agreement were provided only to PacifiCorp's eligible Residential Load. BPA retains the right to take action consistent with the results of such audit to require the passthrough of such benefits to eligible Residential Load. BPA's right to conduct such audits of PacifiCorp with respect to a Contract Year shall expire 60 months after the end of such Contract Year. As long as BPA has the right to audit PacifiCorp pursuant to this Agreement, PacifiCorp agrees to maintain records and documents showing all transactions and other activities pertaining to the terms of this Agreement with respect to which BPA has audit rights.

7. ASSIGNMENT

- (a) PacifiCorp shall be required to assign benefits under this section 7 to BPA if another Qualified Entity: (i) serves Residential Load formerly served by PacifiCorp unless BPA has approved an agency agreement for such Qualified Entity under section 7(c); or (ii) BPA has approved a state program for the passthrough of benefits by a distribution utility under section 7(c).
- (b) This Agreement is binding on any successors and assigns of the Parties. BPA may assign this Agreement to another Federal agency to which BPA's statutory duties have been transferred. Neither Party may otherwise transfer or assign this Agreement without the other Party's written consent. Such consent shall not be unreasonably withheld; provided, however, that PacifiCorp agrees it shall assign benefits under this Agreement subject to the following terms and conditions:
 - (1) PacifiCorp shall quantify an amount of Residential Load each month served by Qualified Entities that would have been eligible to receive benefits if served by PacifiCorp, and provide written notice to BPA of such amount no later than five days prior to the beginning of a month. Such amount shall be determined in account months based on the amounts served by PacifiCorp and Qualified Entities in the last full calendar month prior to such written notice to BPA. An account month is the number of days of service to a Residential Load account during a month, divided by the number of days in such month.
 - (2) Based on the determination in section 7(b)(1) above, PacifiCorp shall assign to BPA during the month following such notice a share of the total benefits specified in section 4 above. Such share shall be the account months of Residential Load served by Qualified Entities divided by the account months of Residential Load of PacifiCorp that would be eligible to receive benefits, whether or not PacifiCorp continues to serve such Residential Load. For purposes of section 7(b)(1) and this section 7(b)(2), the Residential Load of PacifiCorp shall not include Residential Load receiving benefits over a new distribution system under section 7(d).
 - (3) If the passthrough of benefits is made to consumers under section 7(c) below, then PacifiCorp shall retain the cash payments assigned to BPA under this section 7(b). PacifiCorp shall use such cash payments to provide benefits to individual residential and small farm consumers under section 7(c) below.
- (c) PacifiCorp may continue to pass through benefits to individual residential and small farm consumers under this Agreement not served by PacifiCorp

if: (i) PacifiCorp is acting as the agent under an agreement entered into between PacifiCorp and a Qualified Entity which has been approved by PacifiCorp's applicable state regulatory authority and BPA; or (ii) BPA has approved a program developed by the applicable state regulatory authority providing for the passthrough of benefits received by PacifiCorp under this Agreement to all its residential and small farm consumers acting in its capacity as a distribution utility. PacifiCorp may continue to act as an agent for a Qualified Entity until an RPSA is signed by BPA and the Qualified Entity. Such benefits shall be equal to each such consumer's share of the Qualified Entity's share of the Residential Load, as calculated under section 7(b) above. PacifiCorp may distribute such benefits on a less frequent basis than monthly, provided that distributions are made at least once each Contract Year.

- (d) If a Qualified Entity eligible to purchase firm power under section 5(b) of the Northwest Power Act acquires all or a portion of the distribution system serving the Residential Load of PacifiCorp, PacifiCorp shall assign to BPA for the remaining term of this Agreement a share of the total benefits specified in section 4 above. Such share shall be based on the amount of Residential Load that would have been eligible to receive benefits from the new Qualified Entity for the 12-month period prior to the date of assignment divided by the total of Residential Load of PacifiCorp that would have been eligible to receive benefits during that same 12-month period regardless of who served such Residential Load. All provisions of this section 7, other than section 7(b)(2), shall apply to assignments under this section 7(d).

8. CONSERVATION AND RENEWABLE DISCOUNT

Subject to the terms specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, BPA shall pay PacifiCorp an amount equal to the Conservation and Renewables Discount for 251 aMW for each Contract Year during the October 1, 2001, through September 30, 2006, period, unless PacifiCorp has notified PBL before August 1, 2001, that it will not participate in the Conservation and Renewable Discount. Payments shall be made in 12 equal monthly installments, subject to the payment provisions set forth in section 4(d).

To retain the full amount of the Conservation and Renewable Discount, PacifiCorp shall satisfy all obligations associated with the Conservation and Renewables Discount as specified in BPA's applicable Wholesale Power Rate Schedules, including GRSPs, and the Conservation and Renewable Discount implementation manual. PacifiCorp shall reimburse BPA for any amount it received but for which it did not satisfy such obligations.

9. GOVERNING LAW AND DISPUTE RESOLUTION

- (a) This Agreement shall be interpreted consistent with and governed by Federal law. Final actions subject to section 9(c) of the Northwest Power

Act are not subject to binding arbitration and shall remain within the exclusive jurisdiction of the United States Ninth Circuit Court of Appeals. Any dispute regarding any rights of the Parties under any BPA policy, including the implementation of such policy, shall not be subject to arbitration under this Agreement. PacifiCorp reserves the right to seek judicial resolution of any dispute arising under this Agreement that is not subject to arbitration under this section 9. For purposes of this section 9, BPA policy means any written document adopted by BPA as a final action in a decision record or record of decision that establishes a policy of general application, or makes a determination under an applicable statute. If either Party asserts that a dispute is excluded from arbitration under this section 9, either Party may apply to the Federal court having jurisdiction for an order determining whether such dispute is subject to arbitration under this section 9.

- (b) Any contract dispute or contract issue between the Parties arising out of this Agreement, except for disputes that are excluded through section 9(a) above, shall be subject to binding arbitration. The Parties shall make a good faith effort to resolve such disputes before initiating arbitration proceedings. During arbitration, the Parties shall continue performance under this Agreement pending resolution of the dispute, unless to do so would be impossible or impracticable.
- (c) Any arbitration shall take place in Portland, Oregon, unless the Parties agree otherwise. The CPR Institute for Dispute Resolution's arbitration procedures for commercial arbitration, Non-Administered Arbitration Rules (CPR Rules), shall be used for each dispute; provided, however, that: (1) the Parties shall have the discovery rights provided in the Federal Rules of Civil Procedure unless the Parties agree otherwise; and (2) for claims of \$1 million or more, each arbitration shall be conducted by a panel of three neutral arbitrators. The Parties shall select the arbitrators from a list containing the names of 15 qualified individuals supplied by the CPR Institute for Dispute Resolution. If the Parties cannot agree upon three arbitrators on the list within 20 business days, they shall take turns striking names from the list of proposed arbitrators. The Party initiating the arbitration shall take the first strike. This process shall be repeated until three arbitrators remain on the list, and those individuals shall be designated as the arbitrators. For disputes involving less than \$1 million, a single neutral arbitrator shall be selected consistent with section 6 of the CPR Rules.
- (d) Except for arbitration awards which declare the rights and duties of the Parties under the Agreement, the payment of monies shall be the exclusive remedy available in any arbitration proceeding. Under no circumstances shall specific performance be an available remedy against BPA. The arbitration award shall be final and binding on both Parties, except that either Party may seek judicial review based upon any of the grounds referred to in the Federal Arbitration Act, 9 U.S.C. §1-16 (1988). Judgment

entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

(d) **Exhibits**

The exhibits listed in the table of contents are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. The body of this Agreement shall prevail over the exhibits to this Agreement in the event of a conflict.

(e) **No Third-Party Beneficiaries**

This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with this Agreement.

(f) **Waivers**

Any waiver at any time by either Party to this Agreement of its rights with respect to any default or any other matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

12. TERMINATION OF AGREEMENT

If BPA does not adopt the Partial Stipulation and Settlement Agreement in the WP-02 Wholesale Power Rate proceeding, then PacifiCorp may, prior to September 1, 2001, and upon written notice to BPA, terminate both this Agreement and Amendment No. 1 to the Settlement Agreement.

13. SIGNATURES

Each signatory represents that he or she is authorized to enter into this Agreement on behalf of the Party for whom he or she signs.

PACIFICORP

UNITED STATES OF AMERICA
Department of Energy
Bonneville Power Administration

By /S/ M. R. WRIGHT

By /S/ MARK E. MILLER
Account Executive

Name M. R. WRIGHT
(Print/Type)

Name Mark E. Miller
(Print/Type)

Title SVP, Strategy & Planning

Date 5/23/01

Date 5/23/01

(PBLLAN PSB-5_W\PM\CT\10854.doc) May 23, 2001

Exhibit A
RESIDENTIAL LOAD DEFINITION

1. PacifiCorp's Residential Load means the sum of the loads within the Pacific Northwest eligible for the Residential Exchange Program under the tariff schedules described below. If BPA determines that any action changes PacifiCorp's general tariffs or service schedules in a manner which would allow loads other than Residential Loads, as defined in the Northwest Power Act, to be included under these tariff schedules, or that the original general tariffs or service schedules include loads other than Residential Loads, such nonresidential loads shall be excluded from this Agreement.

Such tariff schedules as presently effective include:

- (a) for all schedules listed below, include the amount, expressed in kilowatthours, of Residential Load supplied by PacifiCorp under:
- (1) Oregon
 - Schedule 4 Residential
 - Schedule 14 Outdoor Area Lighting
 - Schedule 24 General Service
 - Schedule 26 Large General Service Less Than 1,000 KW
 - Schedule 41 Agricultural Pumping
 - Schedule 44T Large General Service Agricultural Pumping
 - Schedule 45T Large General Service Domestic and Farm
 - (2) Washington
 - Schedule 13 Outdoor Area Lighting
 - Schedule 16 Residential
 - Schedule 25 General Service
 - Schedule 35 Large General Service Less Than 1,000 KW
 - Schedule 40 Agricultural Pumping
 - Schedule 42 Controlled General Heating
 - Schedule 44T Large General Service Agricultural Pumping
 - (3) Idaho
 - Schedule 1 Residential
 - Schedule 6A General Service -- Large Power Residential & Farm
 - Schedule 7A Security Area Lighting Residential and Farm
 - Schedule 10 Agricultural Pumping
 - Schedule 23A General Service -- Residential and Farm
 - Schedule 36 Residential -- Optional Time-of-Day
 - Schedule 36 Residential -- Optional Time-of-Day
- (b) a portion of the Residential Load as determined pursuant to section 2 of this Exhibit A, supplied by the Utility under the Northwest Power Act, section 5(c).

None.

2. Any farm's monthly irrigation and pumping load qualifying hereunder for each billing period shall not exceed the amount of the energy determined by the following formula:

$$\text{Irrigation/Pumping Load} = 400 \times 0.746 \times \text{days in billing period} \times 24$$

provided, however, that this amount shall not exceed that farm's measured energy for the same billing period (except as provided for in section 5(b) of the body of this agreement.)

where:

400 is equal to the horsepower limit defined in the Northwest Power Act,

0.746 is the factor for converting horsepower to kW,

days in billing period is determined in accordance with prudent and normal utility business practices, and

24 is the number of hours in a day.

3. When more than one farm is supplied from a common pumping installation, the irrigation and pumping load of the installation shall be allocated among the farms using the installation, based on the method (e.g., water shares, acreage) that the farms use to allocate the power costs among themselves. These allocated loads shall then be combined with any other irrigation and pumping loads attributed to the farms under section 2 of this exhibit. In no instance shall any farm's total qualifying irrigation loads for any billing month exceed 222,000 kWh.
4. For purposes of this Agreement, a farm is defined as a parcel or parcels of land owned or leased by one or more persons (person includes partnerships, corporations, or any legal entity capable of owning farm land) that is used primarily for agriculture. Agriculture is defined to include the raising and incidental primary processing of crops, pasturage, or livestock. Incidental primary processing means those activities necessarily undertaken to prepare agricultural products for safe and efficient storage or shipment. All electrical loads ordinarily associated with agriculture as defined above shall be considered as usual farm use.

Contiguous parcels of land under single-ownership or leasehold shall be considered to be one farm. Noncontiguous parcels of land under single-ownership or leasehold shall be considered as one farm unit unless demonstrated otherwise by the owner or lessee of the parcels as determined by BPA.

Parcels of land may not be subdivided into a larger number of parcels in order to attempt to increase the number of farms. Ownership or leasehold interests in farms may not be changed in order to attempt to increase the number of farms, for example, by leases to family members or establishment of partnerships, corporations or similar devices. Acquisition of a parcel which was previously a separate farm becomes part of the single farm that acquired the parcel. In order for a noncontiguous parcel to constitute a separate farm, the farm must not share any equipment or labor with any other parcel and must maintain separate financial statements, accounting records, and tax returns as of May 1, 2000. Any new farms created after May 1, 2000, must submit an application for exchange benefits to PacifiCorp which shall then submit such application to BPA and such application must be reviewed and approved by BPA before the new farm is eligible to receive benefits. A number of additional factors may be used by BPA to determine whether noncontiguous parcels constitute one or more farms. These factors include but are not limited to:

- use
 - ownership
 - control
 - operating practices
 - distance between parcels
5. Unused irrigation allocations may not be reallocated to other farms or to another billing period.
 6. The operator of a farm is required to certify to PacifiCorp all irrigation accounts, including horsepower rating for that farm, including all irrigation accounts commonly shared. The operator of a farm is required to provide PacifiCorp and BPA all documentation requested to assist in the farm determination.
 7. This Exhibit A shall be revised to incorporate additional qualifying tariff schedules, subject to BPA's determination that the loads served under these schedules are qualified under the Northwest Power Act.

(PBLLAN_PSB-5_W\PMSC\PM\CT\10854.doc) May 23, 2001